

**THE HON'BLE SRI JUSTICE GODA RAGHURAM
AND
THE HON'BLE SRI JUSTICE R.SUBHASH REDDY**

Writ Petition No.3874 of 2007

(DATED: 05-12-2007)

Between:

M.Ajit Kumar S/o M.Rajendra Rao

Aged about 42 years

R/o Markpeta, Palakol, West Godavari Distrit

...Petitioner

A n d

The High Court of Andhra Pradesh, Hyderabad
Rep. by its Registrar (Management) and another

...Respondents

:: ORDER::

Counsel for the petitioner : Mr. G.Vidya Sagar

Counsel for the respondents : Mr.P.V.Sanjay Kumar
Standing Counsel for A.P.H.C.

ORAL ORDER : (Per Hon'ble Sri Justice G.Raghuram)

The petitioner was employed in the West Godavari District Judicial unit as a Record Assistant and working in the Court of II Additional Judicial First Class Magistrate, Bhimavaram. By one of the orders impugned dated 8.4.2005 of the second respondent, he was visited with the penalty of removal from service on proven misconduct pursuant to a departmental enquiry. The petitioner preferred an appeal there against to the first respondent. By the other impugned order dated 24.11.2006, the first respondent rejected the appeal concurring with the disciplinary authority.

2. The writ petition is directed against the orders of the disciplinary and appellate authorities, dated 8.4.2005 and 24.11.2006 respectively.

3. **The chronology of facts leading to the lis:**

- (a) On 7.10.2003, the second respondent called upon the petitioner to show cause why disciplinary action be not initiated against him for the misconduct spelt out in the order. According to this order, the II Additional Judicial First Class Magistrate, Bhimavaram in his letter dated 3.10.2003 had reported that certain documents were tampered with and were missing in relation to C.C.Nos.419 of 2000, 420 of 2000 and 421 of 2000 of that Court and the petitioner, who assisted the Bench Clerk (Criminal Bench) was suspected of involvement therewith.

(b) Having issued the show cause notice and without awaiting the petitioner's response thereto, the second respondent post haste issued an order on the same day (7.10.2003) proposing initiation of a regular Departmental Inquiry against the petitioner enumerating three charges, accompanied by a statement of imputation of misconduct and the list of documents and the witnesses by which and whom, the charges are proposed to be substantiated at the Departmental inquiry.

(c) The learned counsel for the petitioner, Sri G.Vidya Sagar strenuously urges that the charges as framed are vague. This Court is also satisfied that facially and textually Charge Nos.1 and 2 are vague and do not indicate the substance of the imputed misconduct (except charge No.3). The petitioner was absolved all through in respect of charge No.3. As a substantial issue is urged with regard to the incoherence of charges 1 and 2, these are extracted:

Charge No.1: That you failed to discharge official duties, regarding tampering of documents in C.C.Nos.419/2000, 420/2000 and 421/2000 on the file of II Additional Judicial I Class Magistrate Court, Bhimavaram, which amounts to misconduct and gross negligence on your part.

Charge No.2: That you failed to maintain a responsible and decent standard of conduct regarding missing of documents in C.C.Nos.419/2000, 420/2000 and 421/2000 on the file of II Additional Judicial I Class Magistrate, Bhimavaram, which amounts to mis-conduct, serious indiscipline and dereliction of duty on your part”

(d) By another order dated 7.10.2003, the second respondent placed the petitioner under suspension

pending inquiry.

- (e) In the departmental inquiry presided over by the Principal Junior Civil Judge, Bhimavaram, five witnesses were examined for the petitioner and eight documents were marked. The petitioner (charged officer) marshalled no evidence in defence, either oral or documentary.
- (f) By his report dated 25.2.2004, the inquiry officer analyzed the evidence in the inquiry and found charges 1 and 2 established, while holding charge No.3 was not proved. A copy of this report was communicated to the petitioner for recording any objections thereto. The petitioner submitted his detailed comments and objections to the process of departmental inquiry and the conclusions recorded by the inquiry officer, by his response dated 29.3.2004.
- (g) The second respondent-disciplinary authority, by the order dated 8.4.2005, concurred with the conclusions of the inquiry officer and imposed the punishment of removal from service. As already stated, the petitioner's appeal was rejected by the first respondent on 24.11.2006.

4. Sri G.Vidya Sagar, the learned counsel for the petitioner, apart from contending that the charges 1 and 2 are vague and incoherent, contends that the conclusion as to the petitioner's guilt recorded by the enquiry officer and as confirmed by the departmental as well as the appellate authority are based on no evidence.

5. That a conclusion in a departmental enquiry must be based on some evidence having a rational nexus to the charge is undisputed. It is also undisputed and too well established to justify an idle parade of familiar authority, that a conclusion in a departmental enquiry based on

no evidence is unsustainable. Our scrutiny is confined to whether the conclusions of the inquiry officer as to the guilt of the petitioner in respect of charges 1 and 2 and the concurrence of the disciplinary and appellate authorities with the inquiry officer, are vitiated to an extent correctible in judicial Review.

6. Though a true and fair construction of charges 1 and 2 it is well-nigh difficult to comprehend them, as the charges do not indicate whether what is alleged is tampering (by the petitioner) of the documents specified; or his involvement or facilitation in the tampering of the documents; or gross negligence on his part which facilitated or enabled the tampering of the documents, we are not inclined to invalidate the entire departmental proceedings only on the basis of the incoherence of charges (1) and (2). We are of the view that if the petitioner had understood the charges in a particular manner and the inquiry officer and the departmental authority have also proceeded on that understanding of the import of the charges, then the relevant dramatic personae are *ad idem* on the language and there would be no justification for examining the language of the charge sheet, on grammatical or lexicographic standards.

7. The petitioner understood the charges to mean an imputation that he tampered or was involved in the tampering of the documents. The petitioner did not understand the charge as an attribution of gross negligence in the performance of his duties resulting in enabling tampering of the documents by a third party, on account of his negligent monitoring of the safe custody of the documents. The inquiry officer, the disciplinary and the appellate authority have equally understood the charges against the petitioner to mean his involvement in the act of tampering and not mere negligence. For this reason, we

do not propose to invalidate the disciplinary inquiry proceedings, the consequential order of the punishment imposed or the appellate order confirming the order of the disciplinary authority, on the preliminary ground of vagueness of charges.

8. Before proceeding to analyse the inquiry report, which was basis on which the disciplinary and the appellate orders are passed, a few events and circumstances preceding disciplinary enquiry, being relevant, are recorded:

(i) On 18.7.2003, the Bench Clerk of the Court of the Additional Judicial First Class Magistrate, Bhimavaram sent up a written report to the Presiding Officer. This report reads:

“Honoured Sir,

I humbly submit that the Record Assistant Sri M.Azit Kumar, used to assist me in discharging my duties as Bench Clerk of Your honour's Court, I used to hand over the keys relating to the Bench Section almyrahs to the said Azit Kumar, for having access to deal with this branch in giving assistance to me.

On 3-12-2002, as usually I handed over the keys relating to my branch i.e., Bench Section to Sri Azit Kumar to deal with the Branch in giving assistance to me and I was informed by the said Azit Kumar, that the keys which were handed over to him in the morning were misplaced and thereupon I along with the said Azit Kumar, made through search for the said keys but in vain.

Then I have taken the second set of keys relating to me from the custody of the Head Clerk and carrying on the regular attendance in discharging my duty with my branch.

Subsequently, I learnt that the documents in C.C.Nos.419/2000, 420/2000 and 421/2000 were tampered at the time of trial and thereby I have decided to change the lock and key relating to my room (outer

lock/key) which is being used in outside to avoid further complication and for my safety. Thereupon I have changed the old one and place new one.

I further humbly submit that the above fact is being placed before your honour for favour of information.”

(ii) On 3.10.2003, the Presiding Officer of that Court addressed the second respondent. To the extent relevant and material, the Presiding Officer's report dated 3.10.2003 is that at the time of recording of evidence in C.C.Nos.419/2000, 420/2000 and 421 of 2000 tampering of records suggesting involvement of the staff of the Court came to the author's notice; on verification, clear interpolation and tampering with Court records was found as well as missing of certain original documents in the C.Cs; that discrete enquiries revealed that while the Bench Clerk is a person of integrity and honesty, the Record Assistant (the petitioner) is a addicted to vices, facing financial constraints on account of debts, has to maintain two families and is therefore a suspicious character; that it had come to the Presiding Officer's notice that on 3.12.2002, the Bench Clerk handed over the keys of Bench Section to the Record Assistant(petitioner) and the keys were misplaced on 3.12.2002, and the confluence of the several events point *prima facie* to the guilt of the petitioner and one of the accused A-2 in the three C.Cs and in the circumstances, this information is brought to the notice of the second respondent. It is this letter dated 3.10.2003 of the Presiding Officer addressed to the second respondent that set the disciplinary inquiry into motion.

9. In the inquiry, the Presiding Officer of the concerned Court was examined as PW-1, who broadly reiterated what was contained in his report dated 3.10.2003. In addition, in his oral testimony, PW-1 stated that after his report to the second respondent dated 3.10.2003 it had

come to his notice that the petitioner, the second accused in three criminal cases and one K.Peddiraju sat together in a photostat shop by name Sai Binding Graphics and Xerox and indulged in the tampering of the documents referred to in his report dated 3.10.2003 and one Sri K.Venkata Ramana, Advocate is a witness to the said incident. In cross examination, PW-1 admits that he did not record the statement of K.Venkata Ramana, Advocate.

10. PW-2, whose statement was recorded in the inquiry, on 6.12.2003, testified that the Bench Clerk Mr.B.Sudheer Bob, who was functionally responsible for the safe handling of the documents, was responsible for missing of the documents. This testimony, insofar as is relevant and material, is that he and the petitioner used to deal with the entire criminal records and arrangements for getting the records ready for the Bench, while PW-2 was attending to the Bench work and used to hand over keys of the almyrahs to the petitioner; on 3.12.2002 PW-2 went on to the Bench handing over the keys to the petitioner and when he asked for the keys in the evening, the petitioner replied that the keys were missing. Both searched for the keys and not having found them, opened the almyrahs of the Record section with the second set of keys obtained from the Head Clerk. One K.Venkata Ramana, Advocate had informed him that he had witnessed the tampering of the documents in M/s.Sai Graphics Binding and Xerox shop situated on the way of Subrahmanyeswara temple on the left side of the canal. In cross examination, PW-2 could not recollect the date on which K.Venkata Ramana, Advocate informed him about the tampering and missing of the documents, except stating that it was about 15 days after suspension of the petitioner. PW-2 admitted that he did not give any report in writing (on this information) either to the

Presiding Officer of the Court or to the Prl. District Judge-the second respondent herein. The testimony of PWs.3 to 5 is of no crucial relevance. Venkata Ramana, the Advocate was not examined.

11. On perusal of the record of the disciplinary inquiry it is seen that the Administrative Officer of the District Court had received a D.O letter dated 6.12.2003 from the II Additional Judicial First Class Magistrate, Bhimavaram enclosing an affidavit submitted by K.Venkata Ramana, Advocate with regard to certain events in connection with tampering of case records. The Administrative Officer of the District Court, by his endorsement dated 11.12.2003 transmitted the affidavit to the enquiry officer *"for mixing up the same in the relevant enquiry file"*. This document was taken on record in the inquiry without marking and without disclosure of its contents to the petitioner.

12. The translation of the affidavit (purported to be of Sri Venkata Ramana, Advocate) which is neither attested nor authenticated, reads:

“ On 18-06-2003, around afternoon 3.30 p.m., when the deponent went to the shop near Subrahmanya Swamy temple on some work, he saw the accused in B.Ed Certificates' case with the Court records and depositions and saw them tampering with those records and taking Xerox copies of the document and that he has personally witnessed this incident”.

13. This affidavit does not record the name of the petitioner nor the name of any of the official of the Court. It is rather intriguing as to why Sri Venkata Ramana gave an affidavit on 5.12.2003 in respect of an incident, which he had witnessed on 18.6.2003 and how that affidavit came to be with the II Additional Judicial First Class Magistrate, Bhimavaram who had transmitted it to the District Court, which, in turn, was transmitted to the enquiry officer *"for mixing up the same in the*

relevant enquiry file”.

14. The fact of the matter is that the affidavit was duly included in the record of inquiry. The affidavit of Sri Venkata Ramana does not corroborate the testimony of PWs.1 and 2 with regard to the role or involvement of the petitioner in the act of tampering. While PW-2 states that Venkata Ramana informed him about the involvement of the petitioner also in the events that transpired in the Xerox shop, the affidavit of Venkata Ramana does not mention anything about the petitioner. PW-1's testimony is even more vague besides the oral evidence of PWs.1 and 2 being purely hearsay on the aspect of Venkata Ramana having stated to witnessing events in the Xerox shop, to PW-2.

15. In the inquiry report, the conclusion as to the petitioner's guilt is seen to be the product of mere conjectures and inferences based on fertile imagination. There is no evidence, which even remotely connects the petitioner to the act of tampering or to his involvement in tampering of Court records.

16. Even from the testimony of Pws.1 and 2 and the admission of PW-2, both the charged officer and PW-2 the Bench Clerk were having custody of the concerned almyrahs, where the documents of the three criminal cases were lodged. Both these Court employees thus had equal access to the records. There is no evidence that on 18.6.2003, when the act of tampering was alleged to have been enacted in the xerox shop (as per Venkata Ramana's affidavit), the charged officer had exclusive custody of the almyrah. Nobody saw the petitioner carrying Court files over to the xerox shop nor is there any evidence as to the petitioner's presence in the Xerox shop when the tampering

is stated to have been done.

17. The inquiry officer records that the Bench Clerks of concerned Courts are entirely responsible for safe custody of the entire records as per the Circular issued by the High Court. The inquiry officer concluded that the petitioner is guilty of charges 1 and 2 on the ground that there was no reason for PWs.1 and 2 to testify against the petitioner, particularly, as the petitioner does not allege any bias against these witnesses.

18. The conclusion of guilt recorded by the inquiry officer is thus based on no evidence except a prejudice on the basis of the oral evidence on record as to the petitioner's profligate habits, indebtedness and indisciplined behaviour while at work. Such general pejorative character however cannot in law constitute sufficient evidence to justify a conclusion of guilt in respect of the specific charge of tampering with or purloining the Court records.

19. As per the oral evidence of PW.1 the Presiding Officer of the concerned Court at the relevant time, the Investigating Officer in three C.Cs had testified (in Calendar Cases) that at the time of sending the documents under Exs.P1 and P2 to the Handwriting Expert there were no strikings, additions or interpolations, in these documents. PW.1 further stated that after his report (dated.03-10-2003) to the District Judge it came to his knowledge that the delinquent, the 2nd accused in all the three cases and one K.Peddi Raju sat together in the xerox shop of Sai Bindings Graphics and Xerox and indulged in tampering of the documents, witnessed by Sri K.Venkata Ramana. PW.1 also testified that the petitioner was addicted to vices, was facing financial difficulties due to debts and that his character and conduct was also

suspicious. As already noticed (and extracted earlier, in translation), the affidavit of the Advocate-Sri K.Venkata Ramana does not mention about the petitioner's presence in or even around the Xerox shop at the time of the alleged tampering. Except a general assertion by PW.2 as to entrustment of the keys of the relevant almyrah to the petitioner and the missing of the keys on 03-12-2003, there is neither direct evidence nor circumstantial nor any evidence whatsoever to connect the petitioner to the charge of involvement in tampering of Court records in the three Calendar Cases.

20. The Inquiry report records that the affidavit of the Advocate-K.Venkata Ramana dated.05-12-2003 was received on 15-12-2003 during the progress of the inquiry; and that this affidavit supports and corroborates the version of PWs.1 and 2. While there is ample evidence as to the tampering of the court records after they were filed into Court, there is no evidence to connect the petitioner/the charged officer with the tampering. It is also intriguing as to why no inquiry at all was initiated against the Bench Clerk-PW.2 who was the official and exclusive custodian of the relevant court records. The inquiry report proceeds on the hypothesis that since PWS.1 and 2 had no animus to falsely implicate the petitioner, the petitioner must be guilty as charged. There is a fundamental and logical fallacy in this approach. In the absence of any evidence oral or documentary to connect the petitioner to the charge of tampering and disappearance of court records, the conclusion as to the petitioner's guilt is based on no evidence and is perverse.

21. After communication to him of the Inquiry report by the covering letter of the 2nd respondent dated.28-02-2004 and pursuant to the instructions therein the petitioner submitted his objections to the

conclusions in the Inquiry report dated.29-03-2004. This is an elaborate explanation. In this explanation the petitioner pointed out the grave deficiencies in the departmental inquiry including non-examination of either the Advocate-K.Venkata Ramana or the owner of the Xerox shop. With regard to the testimony of PWS.1 and 2 also the petitioner pointed out that there is no basis for the wild and breezy allegations by these witnesses and suddenly during the course of their testimony that they were informed about the involvement of the petitioner in the act of tampering in the Xerox shop, by K.Venkata Ramana. K.Venkata Ramana's affidavit dated.05-12-2003 does not state about the presence of the petitioner in the Xerox shop, the petitioner also pointed out.

22. Despite an elaborate explanation including substantive objections submitted by the petitioner, the 2nd respondent-disciplinary authority in the order dated.08-04-2005 did not at all deal with the explanation of the petitioner. The order merely states that the petitioner submitted his written representation "which has not satisfied the disciplinary authority-cum-District Judge". This is a perverse manner of conducting a solemn proceedings. Except enacting the ritual of affording an opportunity, the 2nd respondent- disciplinary authority did not apply its mind to the explanation of the petitioner. By the order dated.08-04-2004 the 2nd respondent proposed the punishment of removal from service and called upon the petitioner to submit a written representation on the quantum of punishment. The petitioner submitted written representation. Eventually by the order dated.08-04-2005 the 2nd respondent imposed the penalty of removal on the petitioner. The disciplinary authority in this order records that the report of the Inquiry Officer clearly revealed that the petitioner had

“resorted to the grave misconduct of tampering of documents in question, which are crucial for the purpose of prosecution case in C.C.Nos.419/2000, 420/2000 and 421/2000 on the file of II Additional Junior civil Judge’s Court, Bhimavaram, indulging the offence of forgery by Accused Nos.1 and 2 concerned in the said cases in the matter of securing B.Ed., seats through correspondence course in a fraudulent manner, which not only amounts to misconduct but also amounts to unbecoming of a public servant in discharge of his duties and as such, the charges 1 and 2 are rightly proved against the charged Employee.”

23. The petitioner submitted an elaborate memorandum of appeal to the 1st respondent. The 1st respondent by the order dated.24-11-2006 rejected the appeal. Dealing with the petitioner-appellate ground that the Inquiry Officer’s findings are based on no evidence, the appellate authority casually held that the Inquiry Officer had analyzed the evidence adduced during the inquiry in great detail and only thereafter held the appellant guilty of charges 1 and 2.

24. We are satisfied from a careful perusal of the report of the departmental inquiry dated.25-02-2004, the order of the disciplinary authority dated.08-04-2005 and the order of the 1st respondent-the appellate authority dated.24-11-2006 as analysed herein above that the finding of guilt recorded against the petitioner in respect of charge Nos.1 and 2 are based on no evidence of any probative value and the order of the disciplinary authority dated.08-04-2005 imposing the penalty of removal from service and of the 1st respondent-the appellate authority dated.24-11-2006 dismissing the appeal, are un-sustainable. The orders dated.08-04-2005 and 24-11-

2006 are accordingly quashed. The petitioner shall be entitled to reinstatement to service with all consequential and incidental benefits.

25. The writ petition is accordingly allowed. There shall be no order as to costs.

GODA RAGHURAM,J

R.SUBHASH REDDY,J

5th DECEMBER 2007
RAR/TSNR

**THE HON’BLE SRI JUSTICE GODA RAGHURAM
AND
THE HON’BLE SRI JUSTICE R.SUBHASH REDDY**

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